

House Bill 117

By: Representatives Heard of the 104th, Knox of the 24th, Lewis of the 15th, Hembree of the 67th, Yates of the 73rd, and others

A BILL TO BE ENTITLED

AN ACT

To amend provisions of the Official Code of Georgia Annotated relating to motorcycles and all-terrain vehicles; to amend Part 1 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to general considerations regarding motor vehicle franchises, so as to exempt motorcycles, all-terrain vehicles, and utility vehicles from the definition of motor vehicle; to amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, so as to provide for definitions; to provide purposes and policies to protect motorcycle, all-terrain vehicle, and utility vehicle dealers; to provide for sales areas; to provide for changing or terminating sales areas only for good cause; to provide for notice of termination or substantial change to a sales area; to provide for repurchase of inventories by the grantor upon termination of a dealership; to provide that it is illegal for a grantor to coerce a dealer to purchase its parts or accessories; to provide that a grantor must approve a sale of a dealership if the terms are reasonable; to provide for succession of the dealership to the dealer's named beneficiaries; to provide for warranty obligations; to provide for dispute resolution; to provide for applicability; to provide an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to general considerations regarding motor vehicle franchises, is amended by revising paragraph (10) of Code Section 10-1-622, relating to definitions relative to motor vehicle franchises, as follows:

"(10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and operation on the public highways, except farm tractors and other machines and tools used in the production, harvesting, and care of farm products, construction equipment, motorcycles as defined in paragraph (7) of subsection (a) of Code Section 10-1-725, all-terrain vehicles as defined in paragraph (1) of subsection (a) of Code Section 10-1-725,

1 utility vehicles as defined in paragraph (12) of subsection (a) of Code Section 10-1-725,
2 and recreational vehicles as defined in paragraph (5) of subsection (a) of Code Section
3 10-1-679."

4 SECTION 2.

5 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
6 trade practices, is amended by inserting a new Article 25A to read as follows:

7 "ARTICLE 25A

8 10-1-725.

9 (a) As used in this article, the term:

10 (1) 'All-terrain vehicle' means any motorized vehicle designed for off-road use which is
11 equipped with three or more low pressure tires and with a seat to be straddled by the
12 operator and with handlebars for steering control.

13 (2) 'Community of interest' means a continuing financial interest between the grantor and
14 the grantee in either the operation of the dealership business or the marketing of such
15 goods or services.

16 (3) 'Dealer' means a person who is a grantee of a motorcycle, all-terrain vehicle, or utility
17 vehicle dealership situated in Georgia.

18 (4) 'Franchise' means an oral or written agreement for a definite or indefinite period of
19 time in which a manufacturer grants to a motorcycle, all-terrain vehicle, or utility vehicle
20 dealer permission to use a trade name, service mark, or related characteristic and in which
21 there is a community of interest in the marketing of motorcycle, all-terrain vehicle, or
22 utility vehicle products or services related thereto at wholesale or retail, whether by
23 leasing, sale, or otherwise.

24 (5) 'Grantor' means a person who grants a motorcycle, all-terrain vehicle, or utility vehicle
25 dealership.

26 (6) 'Moped' or 'scooter' means a motor driven cycle equipped with two wheels, with or
27 without foot pedals to permit muscular propulsion, and an independent power source
28 providing a maximum of two brake horsepower. If a combustion engine is used, the
29 maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters)
30 regardless of the number of chambers in such power source. The power source shall be
31 capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour
32 (48.28 kilometers per hour) on level road surfaces and shall be equipped with a power drive
33 system that functions directly or automatically only, not requiring clutching or shifting by
34 the operator after the drive system is engaged.

(7) 'Motorcycle' means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, utility vehicle, and moped.

(8) 'Motorcycle, all-terrain vehicle, or utility vehicle dealer' means a person who is a grantee of a motorcycle, all-terrain vehicle, or utility vehicle dealership situated in Georgia.

(9) 'Motorcycle, all-terrain vehicle, or utility vehicle dealership' means an established place of business engaged in the marketing of new motorcycle, all-terrain vehicle, or utility vehicle products or services related thereto at wholesale or retail, whether by leasing, sale, or otherwise, and which is marked by an appropriate permanent sign; which has a working telephone with a telephone number listed in the local phone directory; which derives at least 75 percent of its revenue from the sale of new motorcycles, all-terrain vehicles, and utility vehicles and from the sale of motorcycle, all-terrain vehicle, and utility vehicle related products and services; and which provides services or repair for such vehicles.

(10) 'Person' means a natural person, partnership, joint venture, corporation, or other entity.

(11) 'Relevant market area' means the larger of the following:

(A) The area of responsibility defined in the franchise agreement of an existing dealer; or

(B) The geographic area within a radius of 15 miles of any existing dealer of the same line or make of vehicle that is located in a county with a population of more than 200,000 persons according the most recent United States decennial census or within a radius of 25 miles of an existing dealer of the same line or make of vehicle that is located in a county with a population of 200,000 or fewer persons according to the most recent United States decennial census.

(12) 'Tractor' means any self-propelled vehicle designed for use as a traveling power plant or for drawing other vehicles but having no provision for carrying loads independently.

(13) 'Utility vehicle' means any motorized vehicle designed and manufactured for off-road use only which is equipped with four or more low pressure tires, with one or more bench or bucket seats for the operator and passengers, with a steering wheel for steering control, and with a cargo bed.

(b) For purposes of this article when determining whether there is good cause for a proposed action, the trier of fact shall consider:

(1) The volume of the affected dealer's business in the relevant market area;

(2) The nature and extent of the dealer's investment in its business;

(3) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(4) The effect of the proposed action on the community;

(5) The extent and quality of the dealer's service under motorcycle, all-terrain vehicle, or utility vehicle warranties; and

(6) The dealer's performance under the terms of its franchise agreement.

10-1-725.1.

(a) This article shall be liberally construed and applied to promote its underlying remedial purposes and policies.

(b) The underlying purposes and policies of this article are:

(1) To promote the compelling interest of the public in fair business relations between motorcycle, all-terrain vehicle, and utility vehicle dealers and grantors and in the continuation of motorcycle, all-terrain vehicle, and utility vehicle dealerships on a fair basis;

(2) To protect motorcycle, all-terrain vehicle, and utility vehicle dealers against unfair treatment by grantors who inherently have superior economic power and superior bargaining power in the negotiations of motorcycle, all-terrain vehicle, and utility vehicle dealerships;

(3) To provide motorcycle, all-terrain vehicle, and utility vehicle dealers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all franchise agreements for motorcycle, all-terrain vehicle, and utility vehicle dealerships, including any renewals or amendments, to the full extent consistent with the Constitutions of Georgia and the United States.

(c) The effect of this article may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

10-1-725.2.

Sales of motorcycles, all-terrain vehicles, and utility vehicles by grantors or distributors shall be in accordance with published prices, charges, and terms of sale in effect at any given time.

10-1-725.3.

No grantor, directly or through any officer, agent, or employee, may terminate, cancel, fail to renew, or substantially change the competitive circumstances, including the area of sales responsibility, of a motorcycle, all-terrain vehicle, or utility vehicle dealership agreement without good cause. The burden of proving good cause shall be on the grantor.

10-1-725.4.

Except as provided in this Code section, a grantor shall provide a motorcycle, all-terrain vehicle, or utility vehicle dealer at least 180 days' prior written notice of termination,

1 cancellation, nonrenewal, or substantial change in competitive circumstances and shall
2 provide that the motorcycle, all-terrain vehicle, or utility vehicle dealer has 180 days in
3 which to rectify any claimed deficiency. If the deficiency is rectified within 180 days, the
4 notice shall be void. The notice provisions of this Code section shall not apply if the reason
5 for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment
6 for the benefit of creditors, or bankruptcy.

7 10-1-725.5.

8 (a) If a motorcycle, all-terrain vehicle, or utility vehicle dealership franchise agreement is
9 terminated, canceled, or not renewed by the grantor, the grantor, at the option of the
10 motorcycle, all-terrain vehicle, or utility vehicle dealer, shall repurchase:

11 (1) All inventories of motorcycles, all-terrain vehicles, or utility vehicles, parts, and
12 accessories sold by the grantor to the motorcycle, all-terrain vehicle, or utility vehicle
13 dealer for resale; and

14 (2) All diagnostic equipment, special tools, other equipment and machinery, and signage
15 as were required to meet the dealer's service responsibilities in accordance with
16 manufacturer's guides and applicable customer service bulletins and signs sold under the
17 motorcycle, all-terrain vehicle, or utility vehicle dealership agreement.

18 (b) The repurchase price shall be at the original invoice price plus freight, destination,
19 delivery, and distribution charges and sales taxes incurred by the motorcycle, all-terrain
20 vehicle, or utility vehicle dealer. The grantor shall pay the dealer within 30 days of receipt
21 of the returned items. This Code section shall apply only to merchandise with a name,
22 trademark, label, or other mark on it which identifies the grantor or with proof of purchase
23 from the grantor.

24 (c) The grantor shall reimburse the dealer for 100 percent of the invoiced cost to the dealer
25 by the grantor, including transportation, of all new current model year and new current year
26 motorcycle, all-terrain vehicle, or utility vehicle inventory acquired from the manufacturer
27 which has not been materially altered or substantially damaged and of all new motorcycle,
28 all-terrain vehicle, or utility vehicle inventory not of the current model year which has not
29 been materially altered or substantially damaged, provided that the noncurrent model year
30 vehicles were acquired from the manufacturer within 12 months prior to the effective date
31 of the termination, cancellation, or nonrenewal.

32 (d) The grantor shall reimburse the dealer for 100 percent of the current net prices as
33 published in the grantor's current price lists or catalogs on accessories and parts, including
34 superseded parts, plus 40 percent of the current net price of all grantor's accessories and
35 parts returned to compensate the dealer for handling, packing, and loading the parts.

36 10-1-725.6.

1 It shall be unlawful for any grantor, directly or through any officer, agent, or employee:

2 (1) To coerce, or attempt to coerce, any dealer to accept delivery of any parts or
3 accessories or any other commodities which have not been ordered by such dealer; or

4 (2) To coerce, or attempt to coerce, any dealer to enter into an agreement with such
5 grantor or do any other act unfair to such dealer by threatening to cancel any motorcycle,
6 all-terrain vehicle, or utility vehicle dealership franchise agreement existing between such
7 grantor and such dealer.

8 10-1-725.7.

9 It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer of the
10 ownership of a motorcycle, all-terrain vehicle, or utility vehicle dealership by the sale of the
11 business assets, stock transfer, or otherwise or a change in executive management or
12 principal operator of the dealership if the new owner, principal operator, or management is
13 creditworthy, has not been convicted of a felony, and is properly licensed; the sale or transfer
14 will not result in a relocation of the business; and the sale or transfer is otherwise reasonable
15 under the circumstances. The burden of proving that any sale or transfer is not reasonable
16 shall be on the grantor; provided, however, that the grantor and the dealer may mutually agree
17 to a relocation of the business.

18 10-1-725.8.

19 (a) It shall be unlawful for any grantor to fail to provide a motorcycle, all-terrain vehicle, or
20 utility vehicle dealer with an opportunity, at the time of signing a motorcycle, all-terrain
21 vehicle, or utility vehicle dealership franchise agreement or at a reasonable time thereafter,
22 to designate a member of his or her family as a successor to the dealership in the event of
23 the death or incapacity of the dealer. A dealer may from time to time during the term of the
24 franchise agreement change the beneficiary by providing a written notification to the
25 manufacturer.

26 (b) It shall be unlawful to prevent or refuse to honor the succession to a dealership by a
27 member of the family of the deceased or incapacitated dealer unless the grantor has provided
28 to the member of the family so designated written notice of its objections. The burden of
29 proving that such transfer is not reasonable shall be on the grantor.

30 (c) Grounds for objection shall be lack of creditworthiness, conviction of a felony, inability
31 to obtain necessary licenses by the beneficiary, lack of required licenses, or other conditions
32 which make such succession unreasonable under the circumstances; but the grantor shall bear
33 the burden of proving the unreasonableness of such succession. No member of the family
34 of the deceased or incapacitated dealer may succeed to a motorcycle, all-terrain vehicle, or
35 utility vehicle dealership unless the succession to such dealership will not involve, without
36 the grantor's consent, a relocation of the business.

1 10-1-725.9.

2 (a) Each grantor shall specify in writing to each of its motorcycle, all-terrain vehicle, or
3 utility vehicle dealers licensed in Georgia the dealer's obligation for preparation, delivery,
4 and warranty service on its products; shall compensate the dealer for warranty service
5 required of the dealer by the manufacturer; and shall provide the dealer the schedule of
6 compensation to be paid to such dealers for parts, work, and service in connection with
7 warranty service and the time allowances for the performance of such work and service. In
8 no event shall such schedule of compensation fail to include reasonable compensation for
9 diagnostic work as well as repair service and labor.

10 (b) Time allowances for the diagnosis and performance of warranty work and service shall
11 be reasonable and adequate for the work to be performed. In the determination of what
12 constitutes reasonable compensation under this Code section, the principal factors to be
13 given consideration shall be the prevailing wage rates being paid by the dealer and the
14 prevailing labor rate being charged by the dealer in the community in which the dealer is
15 doing business. In no event shall such compensation of a dealer for warranty service be less
16 than the rates charged by the dealer for like service to retail customers for nonwarranty
17 service and repairs so long as such rates are reasonable.

18 (c) A grantor shall reimburse the dealer for warranty parts at actual wholesale costs plus a
19 minimum 25 percent handling charge and the cost, if any, of freight to return warranty parts
20 to the manufacturer. Warranty audits of dealer records may be conducted by the grantor on
21 a reasonable basis. A grantor must disapprove warranty claims in writing within 30 days of
22 the date of submission by the dealer in the manner and form prescribed by the grantor.
23 Claims not specifically disapproved in writing within this 30 days shall be construed to be
24 approved and shall be paid or credited within 45 days.

25 (d) Dealer claims for warranty compensation shall not be denied except for good cause such
26 as performance of nonwarranty repairs, lack of material documentation, fraud, or
27 misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer
28 submission or rejected in writing for stated reasons.

29 (e) It shall be a violation of this article for any grantor to:

30 (1) Fail to perform any of its warranty obligations with respect to a motorcycle, all-terrain
31 vehicle, or utility vehicle and motorcycle, all-terrain vehicle, or utility vehicle components;

32 (2) Fail to assume all responsibility for any liability resulting from structural or
33 production defects;

34 (3) Fail to include written notices of factory recalls to vehicle owners and dealers and the
35 expected date by which necessary parts and equipment will be available to dealers for the
36 correction of such defects;

37 (4) Fail to compensate any of its motorcycle, all-terrain vehicle, or utility vehicle dealers
38 licensed in Georgia for repairs effected by such dealer of merchandise damaged in

1 manufacture or transit to the dealer where the carrier is designated by the manufacturer,
2 factory branch, distributor, or distributor branch;

3 (5) Fail to compensate its motorcycle, all-terrain vehicle, or utility vehicle dealers
4 licensed in this state for warranty parts, work, and service in accordance with the schedule
5 of compensation provided the dealer pursuant to subsection (a) of this Code section or for
6 legal costs and expenses incurred by such dealers in connection with warranty obligations
7 for which the grantor is legally responsible or which the grantor imposes upon the dealer;

8 (6) Misrepresent in any way purchases of motorcycles, all-terrain vehicles, or utility
9 vehicles that contain warranties with respect to the manufacture, performance, or design
10 of the vehicles which are made by the dealer, either as warrantor or co-warrantor; or

11 (7) Require the dealer to make warranties to customers in any manner related to the
12 manufacture of a motorcycle, all-terrain vehicle, or utility vehicle.

13 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for any
14 grantor to fail to indemnify and hold harmless its motorcycle, all-terrain vehicle, or utility
15 vehicle dealers against any losses or damages arising out of claims, costs, judgments,
16 expenses including reasonable attorney's fees, or suits relating to the manufacture, assembly,
17 or design of motorcycles, all-terrain vehicles, or utility vehicles, parts, or accessories, or
18 other functions by the grantor beyond the control of the dealer, including, without limitation,
19 the selection by the grantor of parts or components for the motorcycle, all-terrain vehicle,
20 or utility vehicle or any damages to merchandise occurring in transit to the dealer where the
21 carrier is designated by the grantor. The dealer shall give notice to the grantor of pending
22 suits in which allegations are made which fall under within this subsection whenever
23 reasonably practicable to do so. Any motorcycle, all-terrain vehicle, or utility vehicle dealer
24 franchise agreement issued to, amended, or renewed for motorcycles, all-terrain vehicles,
25 or utility vehicles in Georgia on or after July 1, 2007, shall be deemed to incorporate
26 provisions consistent with the requirements of this subsection.

27 (g) Whenever a new motorcycle, all-terrain vehicle, or utility vehicle is damaged in transit
28 when the carrier or means of transportation is determined by the grantor or distributor or
29 whenever a motorcycle, all-terrain vehicle, or utility vehicle is otherwise damaged prior to
30 delivery to the motorcycle, all-terrain vehicle, or utility vehicle dealer or if a new
31 motorcycle, all-terrain vehicle, or utility vehicle is found to have substantial box or chassis
32 defects upon arrival at the motorcycle, all-terrain vehicle, or utility vehicle dealership, the
33 dealer must notify the grantor or distributor of such damage or such defects within ten
34 business days from the date of delivery or within a reasonable amount of additional time or,
35 if longer, such time as specified in the motorcycle, all-terrain vehicle, or utility vehicle
36 dealership franchise agreement and either:

37 (1) Request from the manufacturer or distributor authorization to replace the components,
38 parts, and accessories damaged or otherwise correct the damage; or

1 (2) Reject the vehicle.

2 If the dealer exercises the option to refuse delivery of the vehicle, the motorcycle, all-terrain
3 vehicle, or utility vehicle manufacturer must immediately repurchase such vehicle.

4 (h) If the grantor or distributor refuses or fails to authorize repair of such damage within ten
5 days after receipt of notification or if the dealer rejects a motorcycle, all-terrain vehicle, or
6 utility vehicle because of damage, ownership of the new motorcycle, all-terrain vehicle, or
7 utility vehicle shall revert to the grantor or distributor and the motorcycle, all-terrain vehicle,
8 or utility vehicle dealer shall have no obligations, financial or otherwise, with respect to such
9 motorcycle, all-terrain vehicle, or utility vehicle.

10 (i) All manufacturers, distributors, and suppliers of motorcycle, all-terrain vehicle, or utility
11 vehicle components shall be subject to the provisions of this article.

12 10-1-725.10.

13 If any grantor violates this article, a motorcycle, all-terrain vehicle, or utility vehicle dealer
14 may bring an action against such grantor in a court of competent jurisdiction in the county of
15 the motorcycle, all-terrain vehicle, or utility vehicle dealer for damages sustained as a
16 consequence of the grantor's violation, together with the actual costs of the action including
17 reasonable attorney's fees; and the dealer also may be granted injunctive relief against unlawful
18 termination, cancellation, nonrenewal, or substantial change of competitive circumstances and
19 refusal to permit transfer of ownership in accordance with this article.

20 10-1-725.11.

21 In any action brought by a motorcycle, all-terrain vehicle, or utility vehicle dealer against a
22 grantor under this article, any violation of this article by the grantor shall be deemed an
23 irreparable injury to the motorcycle, all-terrain vehicle, or utility vehicle dealer for
24 determining if a temporary injunction should be issued.

25 10-1-725.12.

26 It shall be unlawful for a grantor to establish a new motorcycle, all-terrain vehicle, or utility
27 vehicle dealership unless the dealer meets the requirements and definitions provided in this
28 article.

29 10-1-725.13.

30 It shall be unlawful for any dealer to sell or distribute any new motorcycle, all-terrain
31 vehicle, or utility vehicle in Georgia unless the dealer has a franchise dealership agreement
32 with a grantor with the express right to sell or distribute motorcycles, all-terrain vehicles,
33 or utility vehicles in Georgia and meets the requirements and definitions provided in this
34 article. Any dealer who does not meet the requirements of this article may participate in

1 events where motorcycles, all-terrain vehicles, or utility vehicles are exhibited or
2 demonstrated and seminars are provided but shall be prohibited from contracting to sell or
3 distribute motorcycles, all-terrain vehicles, or utility vehicles to the public.

4 10-1-725.14.

5 Any person who violates the provisions of this article shall be guilty of a misdemeanor."

6 **SECTION 3.**

7 This Act shall become effective on July 1, 2007, and shall apply to any agreement entered into
8 on or after July 1, 2007, and to any renewal, modification, or amendment made on or after July
9 1, 2007, to any such agreement.

10 **SECTION 4.**

11 All laws and parts of laws in conflict with this Act are repealed.